



United States Department of Agriculture

United States
Department of
Agriculture

Office of the Chief
Information Officer

1400 Independence
Avenue SW
Washington, DC
20250

February 13, 2019

Delivered via Electronic Mail

Jimmy Tobias
Pacific Standard Magazine
2600 Virginia Avenue NW, 6th Floor
Washington, DC 20037
58883-99274592@requests.muckrock.com

**RE: Freedom of Information Act (FOIA) Request 2018-DA-05445-F
Final Response**

Dear Mr. Tobias:

This is the Departmental FOIA Office's (DFO) final response to the above-referenced FOIA request, seeking the following:

Any written or electronic communications, including attachments, sent or received by Secretary Perdue or his executive assistant(s) that contain one or more of the following words or phrases: "roadless rule" and/or "roadless". This request seeks documents produced between September 1, 2017 and the date this request is processed..

On December 20, 2018, you agreed to waive receipt of email attachments containing publicly available content and, on December 31, 2018, you agreed to waive non-responsive email attachments.

Your request has been processed under the FOIA, 5 U.S.C. § 552

A search for responsive records was conducted by the Office of the Chief Information Officer's (OCIO) telecommunications provider, Customer Experience Center (CEC). This provider performs network services for OCIO to include electronic messaging operations, electronic calendars, blackberry, mobile device management (MDM), file and print, remote access, voice, network, service desk, and other application services. The email accounts of Secretary Perdue were searched for responsive correspondence. You requested that the accounts of the Secretary's executive assistant be searched, as well. The Secretary does not have a traditional executive assistant. Thus, only the Secretary's emails were searched. CEC located ninety-one (91) pages of responsive records.

Following a review of the responsive records, DFO has determined that certain information contained therein should be withheld pursuant to 5 U.S.C.

§552(b)(5) and (6) (FOIA Exemptions 5 and 6). Below is an explanation of the information that has been withheld.

FOIA Exemption 5

FOIA Exemption 5 protects from disclosure those “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” FOIA Exemption 5 protects from disclosure privileged information under the deliberative process privilege.

To fall within FOIA’s deliberative process privilege, the records must be both pre-decisional and deliberative; the records must precede the adoption of an agency policy and include the opinions, recommendations, or deliberations on a legal or policy matter. In this instance, the DFO is withholding, under the deliberative process privilege, pre-decisional discussions contained in email communications, and attachments thereto, between USDA employees.

The responsive records include information that originated with or pertains to USDA’s Forest Service (FS). The DFO consulted FS regarding its equities. The withheld information is redacted with overlay text indicating the agency to which it pertains and the Exemption 5 privilege(s) asserted. FS is withholding, under the deliberative process privilege, pre-decisional discussions contained in email communications and attachments between USDA employees.

FS is also withholding certain information under the attorney-client privilege and the attorney work-product doctrine. The attorney-client privilege protects confidential communication between an attorney and his/her client relating to a legal matter for which the client has sought professional advice. Although this privilege fundamentally applies to facts divulged by a client to his/her attorney, this privilege also encompasses any opinion given by an attorney to his/her client based upon those facts, as well as communications between attorneys that reflect client supplied information. As such, the withheld information is protected from disclosure by the attorney-client privilege of Exemption 5.

The attorney work-product privilege protects materials prepared by an attorney or others in anticipation of litigation by shielding materials which would disclose the attorney’s theory of the case or trial strategy. The privilege is available once specific claims have been identified that make litigation probable. The materials that have been withheld under the attorney work-product privilege were prepared by or for a Department attorney in reasonable anticipation of litigation and reflect the parties’ pre-litigation thoughts and evaluation of matters related to an ongoing negotiation. Thus, the withheld information is protected in full from disclosure by the attorney work-product privilege of Exemption 5.

FOIA Exemption 6

Exemption 6 generally is referred to as the “personal privacy” exemption. It provides that the disclosure requirements of FOIA do not apply to “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Application of the exemption involves balancing the public’s interest in disclosure against individuals’ privacy interests.

The information withheld under Exemption 6 consists of cell phone numbers and certain email addresses. This information qualifies as “similar files” because it is information in which individuals have a privacy interest. Moreover, releasing the cell phone numbers and email addresses could subject the individuals to unwarranted or unsolicited communications. Because there is a viable privacy interest that would be threatened by disclosure, Exemption 6 authorizes this office to withhold the information. Accordingly, we have determined that the public interest in the information’s release does not outweigh the overriding privacy interests in keeping it confidential.

You may appeal this response by email at USDAFOIA@ocio.usda.gov, or by mail to the Assistant Secretary for Administration at 1400 Independence Avenue, S.W., Whitten Building, Room 209-A, Washington, D.C. 20250-0103. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The DFO will not consider appeals received after the 90 calendar-day limit. Appeals received after 5:00 p.m. EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above, a copy of the original request, the DFO’s response to your original request, and a statement explaining the basis of your appeal. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked “Freedom of Information Act Appeal.”

You may appeal any withholdings applied by another agency directly to that agency, within 90 calendar days from receipt of this letter, to the contact information below.

For FS: **by regular mail to:** Chief, USDA, Forest Service
Mail Stop 1143
1400 Independence Avenue, S.W.
Washington, D.C. 20250-1143
wo_foia@fs.fed.us

by FedEx or UPS to:
201 14th Street, S.W.
Washington, D.C. 20250-1143

You may seek dispute resolution services from the DFO’s FOIA Public Liaison, Ms. Ravoyne Payton at USDAFOIA@ocio.usda.gov.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about its FOIA mediation services. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll-free at 1-877-684-6448; or facsimile at 202-741-5769.

Provisions of the FOIA allow us to recover part of the cost of processing your request. In this instance, no fees are being charged.

If you have any questions regarding this letter, please reply to this email or contact 202-694-5982 or USDAFOIA@ocio.usda.gov.

Sincerely,

Alexis Graves
Departmental FOIA Officer
Office of the Chief Information Officer

Enclosure: Responsive Records (91 pages)